

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

In Re: Ethicon Inc., Pelvic Repair System Products Liability Litigation
MDL No. 2327

Civil Action No. 2:16-cv-01470

FIRST AMENDED SHORT FORM COMPLAINT

Come now the Plaintiff(s) named below, and for their Complaint against the Defendants named below, incorporate The First Amended Master Complaint in MDL No. 2327 by reference.

Plaintiff(s) further show the court as follows:

1. Female Plaintiff

Casandra Dupree

2. Plaintiff's Spouse (if applicable)

N/A

3. Other Plaintiff and capacity (i.e., administrator, executor, guardian, conservator)

N/A

4. State of Residence

Alabama

5. District Court and Division in which venue would be proper absent direct filing.

United States District Court for the Middle District of Alabama -

Northern Division

6. Defendants (Check Defendants against whom Complaint is made):

☒ A. Ethicon, Inc.

☒ B. Johnson & Johnson

- ☐ C. American Medical Systems, Inc. (“AMS”)
- ☐ D. Boston Scientific Corporation
- ☐ E. C. R. Bard, Inc. (“Bard”)
- ☐ F. Sofradim Production SAS (“Sofradim”)
- ☐ G. Tissue Science Laboratories Limited (“TSL”)
- ☐ H. Mentor Worldwide LLC
- ☐ I. Coloplast Corp.
- ☐ J. Cook Incorporated
- ☐ K. Cook Biotech, Inc.
- ☐ L. Cook Medical, Inc.
- ☐ M. Desarrollo e Investigación Médica Aragonesa, S.L. (“DIMA”)
- ☐ N. Neomedic International, S.L.
- ☐ O. Neomedic Inc.
- ☐ P. Specialties Remeex International, S.L.

7. Basis of Jurisdiction

- ☒ Diversity of Citizenship
- ☐ Other: _____

A. Paragraphs in Master Complaint upon which venue and jurisdiction lie:

Paragraphs 9, 10, and 11

B. Other allegations of jurisdiction and venue:

N/A

8. Defendants' products implanted in Plaintiff (Check products implanted in Plaintiff)

- ☐ Prolift
- ☐ Prolift +M
- ☐ Gynemesh/Gynemesh PS
- ☐ Prosima
- ☐ TVT
- ☐ TVT-Obturator (TVT-O)
- ☐ TVT-SECUR (TVT-S)
- ☐ TVT-Exact
- ☒ TVT-Abbrevio (x2)
- ☐ Other

9. Defendants' Products about which Plaintiff is making a claim. (Check applicable products):

- ☐ Prolift
- ☐ Prolift +M
- ☐ Gynemesh/Gynemesh PS
- ☐ Prosima
- ☐ TVT

- ☐ TVT-Obturator (TVT-O)
 - ☐ TVT-SECUR (TVT-S)
 - ☐ TVT-Exact
 - ☒ TVT-Abbrevo (**x2**)
 - ☐ Other
-
-

10. Date of Implantation as to Each Product:

5/15/2012 (TVT-Abbrevo)

12/10/2015 (TVT-Abbrevo)

11. Hospital(s) where Plaintiff was implanted (including City and State):

Baptist Medical Center South, Montgomery, AL (TVT-Abbrevo)

Montgomery Surgical Center, Montgomery, AL (TVT-Abbrevo)

12. Implanting Surgeon(s):

Dr. Stuart T. May, III (TVT-Abbrevo)

Dr. Ralph Garrard (TVT-Abbrevo)

13. Counts in the Master Complaint brought by Plaintiff(s):

- ☒ Count I – Negligence
- ☒ Count II – Strict Liability – Manufacturing Defect
- ☒ Count III – Strict Liability – Failure to Warn
- ☒ Count IV – Strict Liability – Defective Product
- ☒ Count V – Strict Liability – Design Defect
- ☒ Count VI – Common Law Fraud

- ☒ Count VII – Fraudulent Concealment
- ☒ Count VIII – Constructive Fraud
- ☒ Count IX – Negligent Misrepresentation
- ☒ Count X – Negligent Infliction of Emotional Distress
- ☒ Count XI – Breach of Express Warranty
- ☒ Count XII – Breach of Implied Warranty
- ☒ Count XIII – Violation of Consumer Protection Laws
- ☒ Count XIV – Gross Negligence
- ☒ Count XV – Unjust Enrichment
- ☐ Count XVI – Loss of Consortium
- ☒ Count XVII – Punitive Damages
- ☒ Count XVIII – Discovery Rule and Tolling
- ☒ Other Count(s) (Please state factual and legal basis for other claims below):

Spoliation. The factual and legal bases discussed and cited in Plaintiffs’ Motion for

Leave to Amend Complaints (ECF No. 461), especially Exhibit M attached thereto,

which was granted by ECF No. 821.

s/ J. Steve Mostyn

J. Steve Mostyn

Mark Sparks

MOSTYN LAW

3810 West Alabama Street

Houston, TX 77027

(713) 714-0000 Telephone

(713) 714-1111 Facsimile

Kurt Arnold

Jason Itkin

Noah Wexler

ARNOLD & ITKIN LLP

6009 Memorial Drive

Houston, TX 77007

(713) 222-3800 Telephone
(713) 222-3850 Facsimile

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive service in this member case.

/s/ J. Steve Mostyn
J. Steve Mostyn